



**Bolpak Trading Co. Ltd v JNE (Suing as the Next Friend and Mother of LNM - Minor) & another (Civil Appeal E061 of 2023) [2025] KEHC 5819 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E061 OF 2023**

**TW OUYA, J**

**MAY 8, 2025**

**BETWEEN**

**BOLPAK TRADING CO. LTD ..... APPELLANT**

**AND**

**JNE (SUING AS THE NEXT FRIEND AND MOTHER OF LNM -  
MINOR) ..... 1<sup>ST</sup> RESPONDENT**

**HARRISON KURIA MACHARIA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgement and decree of Hon. M.W. Kurumbu, P.M, delivered on the 7th of December, 2023, at the Chief Magistrate's Court in Thika CMCC no. 449 of 2019)*

**JUDGMENT**

1. The genesis of this appeal is the judgement and decree of the lower court, in which the trial court awarded the 1<sup>st</sup> respondent a total sum of Kshs.847, 352, as general and special damages, as well as costs of the suit and interest.
2. The above damages were awarded in a suit instituted by the 1<sup>st</sup> respondent, JNE, in her capacity as the next friend and mother of LNM, a minor, following personal injuries that the said minor sustained in a road traffic accident that occurred on the 13<sup>th</sup> January, 2019, off Gatundu - Jerusalem Munyu road, involving him as a passenger aboard Motor Vehicle registration no. KBT 4X2D and Motor Vehicle registration no. KBA 7X3B (the suit vehicle) which was allegedly being negligently driven by the 2<sup>nd</sup> appellant. The particulars of negligence have been pleaded in paragraph 4 of the plaint dated 19<sup>th</sup> July, 2019.
3. The court records show that after a full hearing, the trial court found the appellant and the 2<sup>nd</sup> respondent 100% jointly and severally liable for the accident; and thereafter proceeded to assess damages payable to the 1<sup>st</sup> respondent.



4. The appellant was dissatisfied with the trial court's findings on liability, hence it proffered an appeal to this court vide a Memorandum of Appeal dated 15<sup>th</sup> December, 2023. In its Memorandum of Appeal, the appellant principally complained that the learned trial magistrate erred in law and in fact: In finding that the appellant was vicariously liable for the negligence of the 2<sup>nd</sup> respondent, whereas it had adduced evidence to show that the 2<sup>nd</sup> respondent was only a buyer of the suit vehicle and not its driver, servant, employee and/or agent at the time that the accident occurred; for failing to find that the 1<sup>st</sup> respondent's cause of action was against the 2<sup>nd</sup> respondent, as the appellant was only an importer and Financier of the suit vehicle which the appellant sold to the 2<sup>nd</sup> respondent through a Sale Agreement executed on the 1<sup>st</sup> of April, 2008; for wrongly imposing her personal opinion that even if it was expressly provided under clause 6 of the sale agreement dated the 1<sup>st</sup> of April, 2008, that it was the sole responsibility of the buyer to be liable for all injuries should the suit vehicle be involved in an accident, the appellant was still liable for the sake of compensating the 1<sup>st</sup> respondent for her injuries.
5. The appellant also faulted the learned trial magistrate for failing to find that the suit vehicle was being used by the 2<sup>nd</sup> respondent for his own benefit and not that of the appellant, hence it was wrong for the appellant to be held jointly liable for the 1<sup>st</sup> respondent's damages; for disregarding the sale agreement dated 1<sup>st</sup> April, 2008, proving that the appellant had parted with the control and ownership of the suit vehicle 11 years before the date of the accident; for failing to find that the 2<sup>nd</sup> respondent was the beneficial owner who was in control of the suit vehicle on the 13<sup>th</sup> January, 2019; for going against laid down statutory provisions as well as binding authorities which protect an innocent seller who has no control of a sold vehicle which was at the time of the accident, not being driven by its driver, servant, employee or for its benefit.
6. The appellant further complained that the findings of the learned trial magistrate against the appellant were made without proper consideration of all the binding decisions of both the Court of Appeal and the High court. On the above grounds, the appellant urged this court to allow its appeal, and set aside the whole judgement of the trial court.
7. The appeal was canvassed by way of written submissions, following the directions issued by this court on the 15<sup>th</sup> of July, 2024. The appellant's appeal dated 12<sup>th</sup> August, 2024, was filed on its behalf by its learned counsel Gitau J.H Mwaura Advocates; whereas the submissions by the 1<sup>st</sup> respondent dated 6<sup>th</sup> September, 2024 was filed on her behalf by W.G Wambugu & Co. Advocates her learned counsels. The 2<sup>nd</sup> appellant did not file his written submissions.
8. In its written submissions dated the 12<sup>th</sup> of August, 2024, the appellant mainly reiterated and expounded on its grounds of appeal; and emphasized that the learned trial magistrate's findings that it was 100% liable for the accident that occurred on 13<sup>th</sup> January, 2019, was contrary to decided cases from superior courts, which have held that a sale agreement is a self-explanatory document that absolves the seller from all liability for an accident caused by a sold vehicle.
9. The appellant submitted that the law recognises three alternative forms of ownership, being actual ownership, beneficial ownership or possessory ownership as such, a person who enjoys any of those categories of ownership may be for practical purposes, more liable than the person whose name appears in the certificate.
10. The appellant further submitted that it has adduced sufficient evidence to prove on a balance of probabilities that it has parted with the ownership of the suit vehicle and the same now belongs to the 2<sup>nd</sup> respondent; as such, it is the 2<sup>nd</sup> respondent who should be held liable for the occurrence of the accident.



11. It was the appellant's contention that the 2<sup>nd</sup> respondent, who was the driver of the suit vehicle, was not an employee, servant and/or agent of the appellant, as such, the appellant cannot be held vicariously liable for his negligence. The appellant submitted that it would therefore be in the interest of justice if the judgement of the trial court as against the appellant is set aside, and its appeal be allowed with costs to the 1<sup>st</sup> respondent.
12. On the other hand, the 1<sup>st</sup> respondent in its written submissions gave a brief history of the case and submitted that she had adduced a copy of records from the registrar of Motor Vehicles to prove that the appellant was the registered owner of the suit vehicle. She submitted that the appellant did not state why it never sought to have the said vehicle transferred to the 2<sup>nd</sup> respondent if at all it had sold the vehicle to him.
13. The 1<sup>st</sup> respondent contended that other than the alleged sale agreement, the appellant never adduced any document from the registrar of Motor Vehicles to show that they had transferred or notified the registrar of the sale and intent to transfer the suit vehicle to the alleged buyer. She urged this court to dismiss the appeal with costs.
14. This being a first appeal, it is an appeal on both law and facts, as such, this court has a duty to re-evaluate, re-assess and re-analyse the evidence on record and to come to its own independent conclusion on whether or not the findings reached by the learned trial magistrate should stand; bearing in mind that it neither saw nor heard the witnesses, and make due allowance in that respect.
15. This duty was reiterated by the court of appeal, in the case of *Abok James Odera T/A A.J Odera & Associates versus John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR* as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to reevaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority versus Kuston (Kenya) Limited (2009) 2EA 212* wherein the Court of Appeal held inter alia that: “On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
16. Having stated that, I have carefully considered the grounds of appeal and the rival written submissions filed by both parties together with the authorities cited therein, and I find that the main issue in this appeal is whether the appellant is the owner of the suit motor vehicle, hence liable for the injuries sustained by LNM.
17. The appellant in this case had alleged that the learned trial magistrate erred when she came to the conclusion that it was liable for the accident that occurred on the 13<sup>th</sup> January, 2019, involving the suit vehicle and LNM, a minor who was a passenger onboard Motor Vehicle registration KBT 4X2D; as at the time the accident occurred, it had already sold the said vehicle to the 2<sup>nd</sup> respondent, and it is the 2<sup>nd</sup> respondent who should therefore be held solely liable for the injuries sustained by LNM following the road traffic accident.
18. The appellant had also relied on the fact that the 2<sup>nd</sup> respondent had been indicated as the owner of the Motor Vehicle registration no. KBT 4X2D in the Police abstract dated 11<sup>th</sup> February, 2019, to prove that he had sold the said vehicle to the 2<sup>nd</sup> respondent and therefore had no ties with the said vehicle



or the occurrence of the accident in question, as such, he should not be held liable for the personal injuries sustained by LNM.

19. The 1<sup>st</sup> respondent on the other hand was of the view that both the appellant and 2<sup>nd</sup> respondent should jointly be held liable for the occurrence of the accident, owing to the fact that the Motor Vehicle search from NTSA had revealed that he was the registered owner of the suit vehicle.

20. It is trite that under Section 8 of the *Traffic Act*, a person in whose name a vehicle is registered shall be deemed the owner of the said vehicle unless the contrary is proved. The said provision of law stipulates as follows:

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”

21. The Court of Appeal in *Anil versus Ashur Ahmed Transporters Ltd* [2023] KECA 1149 (KLR); while interpreting Section 8 of the *Traffic Act* stated thus:

“Under Section 8 of the *Traffic Act*, the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. Our understanding of this provision is that the registration of the vehicle is not conclusive proof of ownership but only prima facie evidence of title to a motor vehicle. The person in whose name the vehicle is registered is therefore presumed to be the owner thereof unless proved otherwise. Our understanding aligns with the views expressed by this Court in *Securicor Kenya Ltd vs. Kyumba Holdings Ltd* [2005] eKLR as follows: “We think that the appellant had, by the evidence it led, proved on a balance of probability, that it was not the owner of KWJ 816 at the time the accident occurred since it had sold it. Our holding finds support in the decision in *Osapil Vs. Kaddy* [2000] 1 EALA 187 in which it was held by the Court of Appeal of Uganda that a registration card or logbook was only prima facie evidence of title to a motor vehicle and the person whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise. The appellant had, indeed, proved otherwise. “Our position rhymes with the cited decision so that where there exists other compelling evidence to prove ownership, then the court can find that the owner of the vehicle is a person other than the one whose name appears in the logbook. Therefore, the presumption that the person registered as owner of a motor vehicle in the logbook is the actual owner is rebuttable.”

22. In this case the appellant had adduced as evidence before the trial court, a Sale Agreement dated the 1<sup>st</sup> of April, 2008, between itself and the 2<sup>nd</sup> respondent showing that he had indeed sold the suit vehicle to the 2<sup>nd</sup> respondent 11 years before the occurrence of the accident.

23. I have also noted from the court’s records that that the appellant had adduced a delivery order no. 3145, showing that it had delivered the said vehicle to the 2<sup>nd</sup> respondent on the 1<sup>st</sup> of April, 2008, which is the same date that the 2<sup>nd</sup> respondent had paid the initial deposit of Kshs. 350,000 for the purchase of the said vehicle.

24. Given that no evidence was ever adduced by the 2<sup>nd</sup> respondent to challenge the existence of the Sale Agreement or the Delivery note; I am of the view that the said documents are sufficient proof that the appellant had sold the suit vehicle to the 2<sup>nd</sup> respondent.



25. The fact that the said vehicle was never transferred to the 2<sup>nd</sup> respondent 11 years after the alleged purchase, does not in my view, negate the fact that the appellant had sold the said vehicle to the 2<sup>nd</sup> respondent, who thereafter took possession and full control of the same.
26. Furthermore, as per clause 6 of the Sale Agreement made between the appellant and the 2<sup>nd</sup> respondent, it was the 2<sup>nd</sup> respondent who was to be held liable, in the event that the suit vehicle was to ever get into an accident before a transfer was effected. Clause 6 of the said Agreement stipulates as follows: “Should the Motor vehicle be involved in an accident or stolen, burned etc, it shall be the sole responsibility of the buyer, notwithstanding the fact that the motor vehicle has not been formally transferred into her/his name.”
27. In light of the above, it transpires that though the appellant is the registered owner of the suit vehicle, it had adduced sufficient evidence to prove on a balance of probabilities that it had sold the said vehicle to the 2<sup>nd</sup> respondent; who had therefore become a beneficial owner or possessory owner of the vehicle as at the time of the accident.
28. Based on the above, I am of the considered view that the appellant has proved on a balance of probabilities that it had parted with the ownership of the suit vehicle by selling the same to the 2<sup>nd</sup> respondent and it cannot therefore be held liable for the accident that occurred on the 13<sup>th</sup> of January, 2019.

**Determination.**

29. The upshot of the above is that the appellant is absolved from any liability for the personal injuries sustained by LNM following the road traffic accident. For avoidance of doubt this court finds that the 2<sup>nd</sup> respondent is solely to blame for the occurrence of the said accident.
30. The present appeal therefore, has merit and the same is allowed with costs to the appellant. Judgement and decree of Hon. M.W. Kurumbu, P.M, delivered on the 7<sup>th</sup> of December, 2023, at the Chief Magistrate’s Court in Thika CMCC no. 449 of 2019 is hereby set aside.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF MAY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Gitau

For Respondent....Mugo

Court Assistant...Jackline

